

January 13, 2004

The Honorable John H. Thomas, Chairman
House Science, Technology, and Energy Committee
Legislative Office Building, Room 304
Concord, New Hampshire 03301

Re: HB 1390 - An Act relative to MtBE

Dear Chairman Thomas and Members of the Committee:

On behalf of the Department of Environmental Services (DES), I would like to thank the Committee for the opportunity to comment on HB1390, which would prohibit the sale of gasoline containing the fuel additive MtBE from being sold or offered for sale in the state. As you know, DES has serious concerns about the use of MtBE in gasoline. We support the legislative intent reflected in this bill to reduce or eliminate MtBE in gasoline sold in New Hampshire and offer the following comments.

The petroleum industry has significantly increased the amount of MtBE in New Hampshire's gasoline over the past decade. MtBE makes up as much as 12.5% of the volume of some blends of gasoline being supplied to New Hampshire, which translates into millions of gallons of MtBE being sold in the state each year. As a result, contamination of our water supplies has become a significant problem and we are finding an increasing number of contaminated sites and drinking water supplies over time. This is true even though New Hampshire has one of the most aggressive and successful leak prevention programs for petroleum underground storage tanks in the country, as well as a public outreach program for proper gasoline handling. Unfortunately, MtBE, by its very nature, is difficult to store or handle without contaminating the environment, and is very resistant to cleanup.

While DES believes that the real solution to resolving issues related to MtBE contamination is national legislation to ban or phase out this chemical, Congress has not yet acted on federal energy legislation. In the meantime, several states have adopted bans, including New York and Connecticut, whose bans have gone into effect this month. We think that legislatively banning sale of MtBE in New Hampshire is a viable solution to contamination problems in our state and that studying other states' legislation and experience in implementation would be worthwhile.

In addition to consulting with other states, DES believes that the Committee should seek input from the ethanol industry and the petroleum industry, especially refiners and distributors, regarding supply and pricing issues. Because portions of New Hampshire are still part of the federal reformulated gasoline program, ethanol would likely be used in place of MtBE, as is the case in many other states.

We also suggest that DES staff work with the Committee to address the following issues:

- A tolerance for the presence of *de minimus* levels of MtBE in gasoline. The states of New York, Kansas, Indiana, Ohio and Connecticut use a *de minimus* level of MtBE of 0.5 percent by volume.
- Storage of gasoline in state for distribution outside the state.
- Administrative process for effecting prohibition
- Enforcement, including civil and criminal sanctions.
- Funding issues for implementation and enforcement.
- An absolute date for the banning of the compound.

DES is willing to assist the Committee in addressing these issues. Fred McGarry of my staff will coordinate this assistance.

We appreciate the opportunity to provide the agency's perspective on this proposed legislation to the committee and will seek to assist the committee in any way necessary to obtain further input and information as necessary. If you have any questions or need additional information, please do not hesitate to call me at 271-3503 or Fred McGarry at 271-4978.

Sincerely,

Michael P. Nolin
Commissioner

cc: Rep. Derek Owen
Rep. James Phinizy